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REMARKS

The Applicants have carefully reviewed the Office Action of July 9, 2003. In response the Applicants amend claims 1, 8 and 9 in order to more clearly patentably distinguish the present invention over the prior art. Claims 2-7, 10 and 11 remain in their original form.

As amended, claim 1 very clearly patentably distinguishes over U.S. Patent 5,845,832 to Eichmann. The Eichmann patent discloses a rear-mounted vehicle cargo carrier including a mounting bar 26 for securing in the hitch receiver, a first arm 38 pivotally connected to the mounting bar, a second arm 42 pivotally connected to the first arm and a carrier 46 pivotally mounted to the second arm. Thus, the Eichmann patent discloses a device including a first arm 38 that freely pivots about the pin 40 received in the hole 36 of the mounting bar (see column 3 lines 24-29), a second arm 42 that freely pivots about the pin 44 and a carrier 46 that pivots about the pin 52. Accordingly, three pivotal connections are disclosed.

In contrast, claim 1 reads upon a swinging article carrier assembly wherein only two pivoting components are disclosed. Specifically, the swing arm pivots relative to the mounting arm and the base pivots relative to the swing arm. In contrast, the mounting arm has a nonpivoting connection with the receiver assembly carried on the vehicle. Eichmann explicitly teaches a pivotal connection at the pin 40 and, accordingly, the

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reference explicitly teaches away from the present invention as claimed. Accordingly, claim 1 patentably distinguishes over this art and should be allowed.

Claims 2-8, 10 and 11 which are rejected on the same grounds, depend from claim 1 and are equally allowable for the same reasons. Further, these claims include additional limitations that support their allowability. For example, claim 5 explicitly provides that the pivoting connection between the mounting arm and the swing arm is by a clevis and a pivot pin. No clevis arrangement between the first arm 38 and second arm 42 is disclosed in the Eichmann patent. Thus, the patentability of claim 5 is further established.

Claims 3 and 9 patentably distinguish over the Eichmann patent even when it is considered in combination with U.S. Patent 5,439,151 to Clayton. Clayton is cited for its disclosure of a watertight cargo compartment connected to the carrier portion of a vehicle mounted cargo carrier. Further, the Examiner argues that Clayton teaches a second mounting bar to attach the cargo carrier to certain vehicles. To support this argument the Examiner references Figure 11.

Here it is significant to note that there is absolutely no motivation to combine the Eichmann and Clayton patents in the manner proposed by the Examiner. Specifically, Eichmann explicitly teaches providing a pivotal connection between the first arm 38 and the mounting bar 26. If the first arm 38 is connected to two mounting bars and those

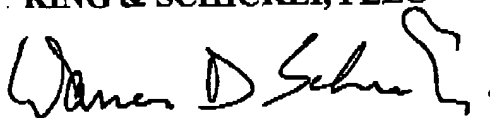
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mounting bars are connected to the vehicle as taught by Clayton, the first arm 38 would be fixed at two points and incapable of pivoting. This would defeat the purposes and advantages of the Eichmann patent presented at column 1 line 61 to column 2 line 23. Accordingly, there is no motivation in the references for the combination proposed by the Examiner. Thus, the rejection of claims 3 and 9 is improper and should be withdrawn.

In summary, all the pending claims patentably distinguish over the prior art and should be formally allowed. Upon careful review and consideration of the prior art in light of the comments presented in this Amendment it is believed the Examiner will agree with this proposition. Accordingly, the early issuance of a formal Notice of Allowance is earnestly solicited.

Respectfully submitted,

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